

2008
10th Circuit
Bench & Bar Conference

Electronic Discovery Session
Saturday September 6, 2008

Local Rules, Guidelines, and Forms
Addressing Electronic Discovery in the 10th Circuit

- District of Colorado, Local Civil Rules, Appendix F
- District of Kansas, Guidelines for the Discovery of Electronically Stored Information
- Western District of Oklahoma, Local Civil Rules, Appendix II
- District of Utah, Attorneys' Planning Meeting Report
- District of Wyoming, Local Civil Rule 26.1 and Appendix D

INSTRUCTIONS FOR PREPARATION OF SCHEDULING ORDER

When the court has set a scheduling conference pursuant to Fed. R. Civ. P. 16 and D.C.COLO.LCivR 16.1 and 16.2, a scheduling order shall be prepared in accordance with these instructions. The rule 26(f) meeting shall be held at least 21 days before the proposed scheduling order is due to be tendered. The disclosures required by Fed. R. Civ. P. 26(a)(1) shall be exchanged at or within 14 days after the rule 26(f) meeting. Do not file any disclosure statements with the court.

Five days before the scheduling conference (see Fed. R. Civ. P. 6 for all computations of time), counsel are to tender a proposed scheduling order which shall include the signatures of counsel and *pro se* parties and shall provide for approval by the court as specified on the attached form. Counsel and *pro se* parties should try, in good faith, to agree upon matters covered in the scheduling order. Any area of disagreement should be set forth with a brief statement concerning the basis for the disagreement. The parties should expect that the court will make modifications in the proposed scheduling order and will want to discuss all issues affecting management of the case.

D.C.COLO.LCivR 72.2 authorizes magistrate judges to exercise jurisdiction of civil matters upon the consent of the parties. If all parties have consented to the exercise of jurisdiction by a magistrate judge pursuant to D.C.COLO.LCivR 72.2, the "Notice of Availability of a United States Magistrate Judge to Exercise Jurisdiction and Consent to the Exercise of Jurisdiction by a United States Magistrate Judge" form and a proposed order of reference are to be filed promptly with the Clerk of the Court and the consent indicated in section 6. of the proposed scheduling order. Note that D.C.COLO.LCivR 72.2D. provides, in part: "Written consent to proceed before a magistrate judge must be filed no later than ten days after the discovery cut-off date. In cases not requiring discovery, the parties shall have 40 days from the filing of the last responsive pleading to file their unanimous consent." Refer to D.C.COLO.LCivR 72.2F. if all parties have not been served or in the event additional parties are added after the scheduling conference.

Listed on the following pages is the format for the proposed scheduling order. The bracketed and italicized information on the form explains what the court expects.

Scheduling orders shall be double-spaced in accordance with D.C.COLO.LCivR 10.1E., even though the instructions in the following format for the proposed scheduling order are single-spaced.

PARTIES AND COUNSEL ARE DIRECTED TO THE COURT'S WEBSITE,
<http://www.cod.uscourts.gov/Dindex.htm>, FOR ITS LOCAL RULES AND THE
GENERAL PROCEDURES OF EACH JUDICIAL OFFICER.

(Rev. 01/01/08)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**
(January 1, 2008 Edition)

Civil Action No. _____

Plaintiff(s),

v.

Defendant(s).

SCHEDULING ORDER

**1. DATE OF CONFERENCE
AND APPEARANCES OF COUNSEL AND *PRO SE* PARTIES**

[Provide the date of the conference and the names, addresses, and telephone numbers of counsel for each party and each pro se party. Identify by name the party represented by each counsel.]

2. STATEMENT OF JURISDICTION

[Provide a concise statement of the basis for subject matter jurisdiction with appropriate statutory citations. If jurisdiction is denied, give the specific reason for the denial.]

3. STATEMENT OF CLAIMS AND DEFENSES

- a. *Plaintiff(s):*
- b. *Defendant(s):*
- c. *Other Parties:*

[Provide concise statements of all claims or defenses. Each party, in light of formal or informal discovery undertaken thus far, should take special care to eliminate frivolous claims or defenses. Fed. R. Civ. P. 16(c)(1), 11. Do not summarize the pleadings. Statements such as "defendant denies the material allegations of the complaint" are not acceptable.]

4. UNDISPUTED FACTS

The following facts are undisputed:

[When the parties have their rule 26(f) meeting, they should make a good-faith attempt to determine which facts are not in dispute.]

5. COMPUTATION OF DAMAGES

[Include a computation of all categories of damages sought and the basis and theory for calculating damages. See Fed. R. Civ. P. 26(a)(1)(C). This should include the claims of all parties. It should also include a description of the economic damages, non-economic damages, and physical impairment claimed, if any.]

6. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER FED. R. CIV. P. 26(f)

- a. Date of rule 26(f) meeting.
- b. Names of each participant and party he/she represented.
- c. Proposed changes, if any, in timing or requirement of disclosures under Fed. R. Civ. P. 26(a)(1).

- d. Statement as to when rule 26(a)(1) disclosures were made or will be made.

[If a party's disclosures were not made within the time provided in Fed. R. Civ. P. 26(a)(1), the party must provide here an explanation showing good cause for the omission.]

- e. Statement concerning any agreements to conduct informal discovery, including joint interviews with potential witnesses, exchanges of documents, and joint meetings with clients to discuss settlement. If there is agreement to conduct joint interviews with potential witnesses, list the names of such witnesses and a date and time for the interview which has been agreed to by the witness, all counsel, and all *pro se* parties.

- f. Statement as to whether the parties anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form. In those cases, the parties must indicate what steps they have taken or will take to (i) preserve electronically stored information; (ii) facilitate discovery of electronically stored information; (iii) limit associated discovery costs and delay; and (iv) avoid discovery disputes relating to electronic discovery. Describe any agreements the parties have reached for asserting claims of privilege or of protection as trial- preparation materials after production of computer-generated records.

[When the parties have their Rule 26(f) meeting, they must discuss any issues relating to the disclosure and discovery of electronically stored information, including the form of

production, and also discuss issues relating to the preservation of electronically stored information, communications, and other data. At the Rule 26(f) conference, the parties should make a good faith effort to agree on a mutually acceptable format for production of electronic or computer-based information. In advance of the Rule 26(f) meeting, counsel should carefully investigate their client's information management system so that they are knowledgeable as to its operation, including how information is stored and how it can be retrieved.]

7. CONSENT

[Pursuant to D.C.COLO.LCivR 72.2, all full-time magistrate judges in the District of Colorado are specially designated under 28 U.S.C. 636(c)(1) to conduct any or all proceedings in any jury or nonjury civil matter and to order the entry of judgment. Upon consent of the parties and an order of reference from the district judge, the magistrate judge assigned the case under 28 U.S.C. 636(a) and (b) will hold the scheduling conference and retain settlement jurisdiction, whereas pretrial case management, jurisdiction of dispositive motions, and trial will be assigned to the magistrate judge drawn at random under D.C.COLO.LCivR 72.2.]

[Indicate below the parties consent choice. Parties consenting to the exercise of jurisdiction by a magistrate judge must complete and file the court-approved Consent to the Exercise of Jurisdiction by a United States Magistrate Judge form.]

All parties *[have or have not]* consented to the exercise of jurisdiction of a magistrate judge.

8. CASE PLAN AND SCHEDULE

a. Deadline for Joinder of Parties and Amendment of Pleadings:

[Set time period within which to join other parties and to amend all pleadings. This portion of the scheduling order relates to timing only. It does not eliminate the necessity to file an appropriate motion and to otherwise comply with Fed. R. Civ. P. 15. Unless otherwise ordered in a particular case, for good cause, these dates should be no later than 45 days after the date of the scheduling conference, so as to minimize the possibility that late amendments and joinder of parties will precipitate requests for extensions of discovery cutoff, final pretrial conference, and dispositive motion dates. Counsel and pro se parties should plan discovery so that discovery designed to identify additional parties or claims is completed before these deadlines.]

b. Discovery Cut-off:

c. Dispositive Motion Deadline:

[Set time periods in which discovery is to be completed and dispositive motions are to be filed.]

d. Expert Witness Disclosure

[(1) State anticipated fields of expert testimony, if any.

(2) State any limitations proposed on the use or number of expert witnesses.

(3) The parties shall designate all experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before _____, 200__.

(4) The parties shall designate all rebuttal experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before _____, 200__.

(5) Notwithstanding the provisions of Fed. R. Civ. P. 26(a)(2)(B), no exception to the requirements of the rule will be allowed by stipulation of the parties unless the stipulation is approved by the court.]

e. Deposition Schedule:

<i>Name of Deponent</i>	<i>Date of Deposition</i>	<i>Time of Deposition</i>	<i>Expected Length of Deposition</i>

[List the names of persons to be deposed and a schedule of any depositions to be taken, including (i) a good faith estimate of the time needed for the deposition and (ii) time(s) and date(s) for the deposition which have been agreed to by the deponent and persons signing the scheduling order. The parties must comply with the notice and scheduling requirements set forth in D.C.COLO.LCivR 30.1.]

f. Interrogatory Schedule

[Set a schedule for the submission of and response to written interrogatories, if any are desired.]

g. Schedule for Request for Production of Documents

[Set a schedule for the submission of and response to requests for documents, if any are desired.]

h. Discovery Limitations:

- depositions.
- (1) Any limits which any party wishes to propose on the number of
 - (2) Any limits which any party wishes to propose on the length of depositions.
 - (3) Modifications which any party proposes on the presumptive numbers of depositions or interrogatories contained in the federal rules.
 - (4) Limitations which any party proposes on number of requests for production of documents and/or requests for admissions.

[At the rule 26(f) meeting, the parties should make a good-faith attempt to agree to limit the number of depositions, interrogatories, requests for admissions, and requests for production. In the majority of cases, the parties should anticipate that the court will adopt the numerical limitations on depositions and interrogatories established in Fed. R. Civ. P. 30(a)(2)(A), 33.]

- (5) Other Planning or Discovery Orders

[Set forth any other proposed orders concerning scheduling or discovery. For example, the parties may wish to establish specific deadlines for submitting protective orders or for filing motions to compel.]

9. SETTLEMENT

[The parties must certify here that, as required by Fed. R. Civ. P. 26(f), they have discussed the possibilities for a prompt settlement or resolution of the case by alternate dispute resolution. They must also report the result of any such meeting, and any similar future meeting, to the magistrate judge within ten days of the meeting.]

10. OTHER SCHEDULING ISSUES

- a. A statement of those discovery or scheduling issues, if any, on which counsel, after a good-faith effort, were unable to reach an agreement.
- b. Anticipated length of trial and whether trial is to the court or jury.
- c. A request to conduct appropriate pretrial proceedings in the Court's facility at 212 N. Wahsatch Street, Colorado Springs, Colorado. *[Determination of any such request will be made by the assigned magistrate judge based on the individual needs of the case and the availability of space and security resources.]*

11. DATES FOR FURTHER CONFERENCES

[The magistrate judge will complete this section at the scheduling conference if he or she has not already set deadlines by an order filed before the conference.]

- a. A settlement conference will be held on _____ at _____ o'clock __.m.

It is hereby ordered that all settlement conferences that take place before the magistrate judge shall be confidential.

- () *Pro se* parties and attorneys only need be present.

() *Pro se* parties, attorneys, and client representatives with authority to settle must be present. (NOTE: This requirement is not fulfilled by the presence of counsel. If an insurance company is involved, an adjuster authorized to enter into settlement must also be present.)

() Each party shall submit a Confidential Settlement Statement to the magistrate judge on or before _____ outlining the facts and issues, as well as the strengths and weaknesses of their case.

b. Status conferences will be held in this case at the following dates and times:

c. A final pretrial conference will be held in this case on _____ at _____ o'clock ____m. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than five days before the final pretrial conference.

12. OTHER MATTERS

[The following paragraphs shall be included in the scheduling order:]

In addition to filing an appropriate notice with the clerk's office, counsel must file a copy of any notice of withdrawal, notice of substitution of counsel, or notice of change of counsel's address or telephone number with the clerk of the magistrate judge assigned to this case.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures established by the judicial officer presiding over the trial of this case.

In addition to filing an appropriate notice with the clerk's office, a *pro se* party must file a copy of a notice of change of his or her address or telephone number with the clerk of the magistrate judge assigned to this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1A.

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1D. by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

13. AMENDMENTS TO SCHEDULING ORDER

[Include a statement that the scheduling order may be altered or amended only upon a showing of good cause.]

DATED this _____ day of _____ 200__.

BY THE COURT:

United States Magistrate Judge

APPROVED:

(Name)
(Address)
(Address)
(Telephone Number)
Attorney for Plaintiff (or Plaintiff, *Pro Se*)

(Name)
(Address)
(Address)
(Telephone Number)
Attorney for Defendant (or Defendant, *Pro Se*)

[Please affix counsels' and any pro se party's signatures before submission of the scheduling order to the court.]

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

Guidelines for Discovery of Electronically Stored Information (ESI)

These guidelines are intended to facilitate compliance with the provisions of Fed. R. Civ. P. 16, 26, 33, 34, 37, and 45, as amended December 1, 2006 and December 1, 2007, relating to the discovery of ESI. In the case of any asserted conflict between these guidelines and the above-referenced rules, the latter shall control.

1. Existence of ESI. Prior to the Fed. R. Civ. P. 26(f) conference, counsel should become knowledgeable about their clients' information management systems and their operation, including how information is stored and retrieved. In addition, counsel should make a reasonable attempt to review their clients' ESI to ascertain the contents, including backup, archival and legacy data (outdated formats or media).¹

2. Duty to disclose. Disclosures pursuant to Fed. R. Civ. P. 26(a)(1) must include any ESI that the disclosing party may use to support its claims or defenses (unless used solely for impeachment). To determine what information must be disclosed pursuant to this rule, counsel should review, with their clients, the clients' ESI files, including current, back-up, archival, and legacy computer files. Counsel should be aware that documents in paper form may have been generated by the client's information system; thus, there may be ESI related to that paper document. If any party intends to disclose ESI, counsel should identify those individuals with knowledge of their clients' electronic information systems who can facilitate the location and identification of discoverable ESI prior to the Fed. R. Civ. P. 26(f) conference.

3. Duty to notify. A party seeking discovery of ESI should notify the opposing party of that fact immediately, and, if known at the time of the Fed. R. Civ. P. 26(f) conference, should identify as clearly as possible the categories of information that may be sought. Parties and counsel are reminded that, under Fed. R. Civ. P. 34, if the requesting party has not designated a form of production² in its request, or if the responding party objects to the designated form, then the responding party must state in its written response the form it intends to use for producing ESI.

¹For definitions of terms used in these guidelines, see The Sedona Conference® Glossary: E-Discovery & Digital Information Management (Second Edition) at http://www.thesedonaconference.org/dltForm?did=TSCGlossary_12_07.pdf.

²For a discussion of "form of production," see Fed. R. Civ. P. 34(b) cmt. to 2006 amendments.

4. Duty to meet and confer regarding ESI. During the Fed. R. Civ. P. 26(f) conference, the parties should confer regarding the following matters:³

(a) **ESI in general.** Counsel should attempt to agree on steps the parties will take to segregate and preserve ESI in order to avoid accusations of spoliation.

(b) **E-mail information.** Counsel should attempt to agree on the scope of e-mail discovery and e-mail search protocol.

(c) **Deleted information.** Counsel should attempt to agree on whether responsive deleted information still exists, the extent to which restoration of deleted information is needed, and who will bear the costs of restoration.

(d) **“Embedded data” and “metadata.”** “Embedded data” typically refers to draft language, editorial comments, and other deleted matter retained by computer programs. “Metadata” typically refers to information describing the history, tracking, or management of an electronic file. The parties should discuss at the Fed. R. Civ. P. 26(f) conference whether “embedded data” and “metadata” exist, whether it will be requested or should be produced, and how to handle determinations regarding privilege or protection of trial preparation materials.

(e) **Back-up and archival data.** Counsel should attempt to agree on whether responsive back-up and archival data exists, the extent to which back-up and archival data is needed, and who will bear the cost of obtaining such data.

(f) **Format and media.** Counsel should attempt to agree on the format and media to be used in the production of ESI.

(g) **Reasonably accessible information and costs.** The volume of, and ability to search, ESI means that most parties’ discovery needs will be satisfied from reasonably accessible sources. Counsel should attempt to determine if any responsive ESI is not reasonably accessible, i.e., information that is only accessible by incurring undue burdens or costs. If the responding party is not searching or does not plan to search sources containing potentially responsive information, it should identify the category or type of such information. If the requesting party intends to seek discovery of ESI from sources identified as not reasonably accessible, the parties should discuss: (1) the burdens and costs of accessing and retrieving the information, (2) the needs that may establish good cause for requiring production of all or part of the information, even if the information sought is not reasonably accessible, and (3) conditions on obtaining and producing this information such as scope, time, and allocation of cost.

³For a more detailed description of matters that may need to be discussed, see Craig Ball, *Ask and Answer the Right Questions in EDD*, LAW TECHNOLOGY NEWS, Jan. 4, 2008, accessed on Feb. 1, 2008 at <http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1199441131702#> and reprinted in these Guidelines with permission at Appendix 1.

(h) Privileged or trial preparation materials. Counsel should attempt to reach an agreement regarding what will happen in the event privileged or trial preparation materials are inadvertently disclosed. If the disclosing party inadvertently produces privileged or trial preparation materials, it must notify the requesting party of such disclosure. After the requesting party is notified, it must return, sequester, or destroy all information and copies and may not use or disclose this information until the claim of privilege or protection as trial preparation materials is resolved.

(1) The parties may agree to provide a “quick peek,” whereby the responding party provides certain requested materials for initial examination without waiving any privilege or protection.

(2) The parties may also establish a “clawback agreement,” whereby materials that are disclosed without intent to waive privilege or protection are not waived and are returned to the responding party, so long as the responding party identifies the materials mistakenly produced.

Other voluntary agreements should be considered as appropriate. The parties should be aware that there is an issue of whether such agreements bind third parties who are not parties to the agreements.⁴

5. Duty to meet and confer when requesting ESI from nonparties (Fed. R. Civ. P. 45). Parties issuing requests for ESI from nonparties should attempt to informally meet and confer with the non-party (or counsel, if represented). During this meeting, counsel should discuss the same issues with regard to requests for ESI that they would with opposing counsel as set forth in paragraph 4 above.

[February 1, 2008]

⁴For a detailed discussion on this issue, see Hon. John M. Facciola, *Sailing on Confused Seas: Privilege Waiver and the New Federal Rules of Civil Procedure*, 2006 Fed. Cts. L. Rev. 6 (Sept. 2006) at <http://www.fclr.org/2006fedctsirev6.htm>.

APPENDIX 1

Ask and Answer the Right Questions in EDD

Craig Ball
Law Technology News
January 4, 2008

Sometimes it's more important to ask the right questions than to know the right answers, especially when it comes to nailing down sources of electronically stored information, preservation efforts and plans for production in the FRCP Rule 26(f) conference, the so-called "meet and confer."

The federal bench is deadly serious about meet and confers, and heavy boots have begun to meet recalcitrant behinds when Rule 26(f) encounters are perfunctory, drive-by events. Enlightened judges see that meet and confers must evolve into candid, constructive mind melds if we are to take some of the sting and "gotcha" out of e-discovery. Meet and confer requires intense preparation built on a broad and deep gathering of detailed information about systems, applications, users, issues and actions. An hour or two of hard work should lie behind every minute of a Rule 26(f) conference. Forget "winging it" on charm or bluster and forget "We'll get back to you on that."

Here are 50 questions of the sort I think should be hashed out in a Rule 26(f) conference. If you think asking them is challenging, think about what's required to deliver answers you can certify in court. It's going to take considerable arm-twisting by the courts to get lawyers and clients to do this much homework and master a new vocabulary, but, there is no other way.

These 50 aren't all the right questions for you to pose to your opponent, but there's a good chance many of them are . . . and a likelihood you'll be in the hot seat facing them, too.

1. What are the issues in the case?
2. Who are the key players in the case?
3. Who are the persons most knowledgeable about ESI systems?
4. What events and intervals are relevant?
5. When did preservation duties and privileges attach?
6. What data are at greatest risk of alteration or destruction?
7. Are systems slated for replacement or disposal?
8. What steps have been or will be taken to preserve ESI?
9. What third parties hold information that must be preserved, and who will notify them?
10. What data require forensically sound preservation?
11. Are there unique chain-of-custody needs to be met?
12. What metadata are relevant, and how will it be preserved, extracted and produced?
13. What are the data retention policies and practices?
14. What are the backup practices, and what tape archives exist?
15. Are there legacy systems to be addressed?
16. How will the parties handle voice mail, instant messaging and other challenging ESI?

17. Is there a preservation duty going forward, and how will it be met?
18. Is a preservation or protective order needed?
19. What e-mail applications are used currently and in the relevant past?
20. Are personal e-mail accounts and computer systems involved?
21. What principal applications are used in the business, now and in the past?
22. What electronic formats are common, and in what anticipated volumes?
23. Is there a document or messaging archival system?
24. What relevant databases exist?
25. Will paper documents be scanned, and if so, at what resolution and with what OCR and metadata?
26. What search techniques will be used to identify responsive or privileged ESI?
27. If keyword searching is contemplated, can the parties agree on keywords?
28. Can supplementary keyword searches be pursued?
29. How will the contents of databases be discovered? Queries? Export? Copies? Access?
30. How will de-duplication be handled, and will data be re-populated for production?
31. What forms of production are offered or sought?
32. Will single- or multipage .tiffs, PDFs or other image formats be produced?
33. Will load files accompany document images, and how will they be populated?
34. How will the parties approach file naming, unique identification and Bates numbering?
35. Will there be a need for native file production? Quasi-native production?
36. On what media will ESI be delivered? Optical disks? External drives? FTP?
37. How will we handle inadvertent production of privileged ESI?
38. How will we protect trade secrets and other confidential information in the ESI?
39. Do regulatory prohibitions on disclosure, foreign privacy laws or export restrictions apply?
40. How do we resolve questions about printouts before their use in deposition or at trial?
41. How will we handle authentication of native ESI used in deposition or trial?
42. What ESI will be claimed as not reasonably accessible, and on what bases?
43. Who will serve as liaisons or coordinators for each side on ESI issues?
44. Will technical assistants be permitted to communicate directly?
45. Is there a need for an e-discovery special master?
46. Can any costs be shared or shifted by agreement?
47. Can cost savings be realized using shared vendors, repositories or neutral experts?
48. How much time is required to identify, collect, process, review, redact and produce ESI?
49. How can production be structured to accommodate depositions and deadlines?
50. When is the next Rule 26(f) conference (because we need to do this more than once)?

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

v. Plaintiff,

 Defendant.

)

)

) Case No. _____

)

)

)

Date of Conference:

Appearing for Plaintiff: _____

Appearing for Defendant: _____

1. **BRIEF PRELIMINARY STATEMENT.** State briefly and in ordinary language the facts and positions of the parties to inform the judge of the general nature of the case.
2. **JURISDICTION.** The basis on which the jurisdiction of the Court is invoked and any presently known objections.
3. **STIPULATED FACTS.** List stipulations as to all facts that are not disputed or reasonably disputable, including jurisdictional facts.
4. **CONTENTIONS AND CLAIMS FOR DAMAGES OR OTHER RELIEF SOUGHT.**

a. Plaintiff:

b. Defendant:

5. **APPLICABILITY OF FED. R. CIV. P. 5.1 AND COMPLIANCE.**

Do any of the claims or defenses draw into question the constitutionality of a federal or state statute where notice is required under 28 U.S.C. § 2403 or Fed. R. Civ. P. 5.1?

☐ Yes ☐ No

6. **MOTIONS PENDING AND/OR ANTICIPATED** (include date of filing, relief requested, and date responsive brief to be filed).

7. **COMPLIANCE WITH RULE 26(a)(1)**. Have the initial disclosures required by Fed. R. Civ. P. 26(a)(1) been made? ☐ Yes ☐ No
If “no,” by what date will they be made? _____

8. **PLAN FOR DISCOVERY.**

A. The discovery planning conference (Fed. R. Civ. P. 26(f)) was held on _____.

B. The parties anticipate that discovery should be completed within _____ months.

C. In the event ADR is ordered or agreed to, what is the minimum amount of time necessary to complete necessary discovery prior to the ADR session?
_____.

D. Have the parties discussed issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced, as required by Fed. R. Civ. P. 26(f)(3)?

☐ Yes ☐ No

E. Have the parties discussed issues relating to claims of privilege or of protection as trial-preparation material, as required by Fed. R. Civ. P. 26(f)(4)?

☐ Yes ☐ No

F. Identify any other discovery issues which should be addressed at the scheduling conference, including any subjects of discovery, limitations on discovery, protective orders needed, or other elements (Fed. R. Civ. P. 26(f)) which should be included in a particularized discovery plan.

9. **ESTIMATED TRIAL TIME:** _____

10. **BIFURCATION REQUESTED:** ☐ Yes ☐ No
11. **POSSIBILITY OF SETTLEMENT:** ☐ Good ☐ Fair ☐ Poor

12. **SETTLEMENT AND ADR PROCEDURES:**

A. Compliance with LCvR 16.3(c) - ADR discussion: ☐ Yes ☐ No

B. The parties request that this case be referred to the following ADR process:

☐ Mediation

☐ Judicial Settlement Conference

☐ Other _____

☐ None - the parties do not request ADR at this time.

13. **Parties consent to trial by Magistrate Judge?** ☐ Yes ☐ No

14. **Type of Scheduling Order Requested.** ☐ Standard - ☐ Specialized (If a specialized scheduling order is requested, counsel should include a statement of reasons and proposal.)

Submitted this _____ day of _____.

Counsel for Plaintiff

Counsel for Defendant

Counsel Submitting and Utah State Bar Number
Attorneys for
Address
Telephone
E-mail Address

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH _____ DIVISION**

VS.

*
*
*
*
*
*
*

**ATTORNEYS' PLANNING
MEETING REPORT**

Case No. _____
District Judge _____

1. PRELIMINARY MATTERS:

- a. The nature of the claims and affirmative defenses is:
- b. This case is _____ not referred to a magistrate judge
_____ referred to magistrate judge _____
_____ under 636(b)(1)(A) or
_____ under 636(b)(1)(B)
_____ assigned to a magistrate judge under General Order 07-001 and
_____ all parties consent to the assignment for all proceedings or
_____ one or more parties request reassignment to a district judge.
- c. Pursuant to Fed. R.Civ.P. 26(f), a meeting was held on _____ *specify*
date at _____ *specify location*.

The following were in attendance:

_____ *name of attorney,*
counsel for _____ *name of party*
_____ *name of attorney,*
counsel for _____ *name of party*

- d. The parties _____ request / _____ do not request an initial pretrial scheduling conference with the court prior to entry of the scheduling order. An initial pretrial scheduling conference is set before Magistrate Judge _____

on _____, 20____, at _____. m.

- e. The parties _____ have exchanged or _____ will exchange by ____/____/____ the initial disclosures required by Rule 26(a)(1).
- f. Pursuant to Fed. R. Civ. P. 5(b)(2)(D), the parties agree to receive all items required to be served under Fed.R.Civ.P. 5(a) by either (i) notice of electronic filing, or (ii) e-mail transmission. Such electronic service will constitute service and notice of entry as required by those rules. Any right to service by USPS mail is waived.

2. DISCOVERY PLAN: The parties jointly propose to the court the following discovery plan:

Use separate paragraphs or subparagraphs as necessary if the parties disagree.

- a. Discovery is necessary on the following subjects: *Briefly describe the subject areas in which discovery will be needed.*
- b. Discovery Phases.
Specify whether discovery will (i) be conducted in phases, or (ii) be limited to or focused upon particular issues. If (ii), specify those issues and whether discovery will be accelerated with regard to any of them and the date(s) on which such early discovery will be completed.
- c. Designate the discovery methods to be used and the limitations to be imposed.
 - (1) *For oral exam depositions, (i) specify the maximum number for the plaintiff(s) and the defendant(s), and (ii) indicate the maximum number of hours unless extended by agreement of the parties.*

Oral Exam Depositions

Plaintiff(s) _____

Defendant(s) _____

Maximum no. hrs. per deposition _____

- (2) *For interrogatories, requests for admissions, and requests for production of documents, specify the maximum number that will be served on any party by any other party.*

Interrogatories _____

Admissions _____

Requests for production of documents _____

- (3) Other discovery methods *Specify any other methods that will be used and any limitations to which all parties agree.*
- d. Discovery of electronically stored information should be handled as follows: *Brief description of parties' agreement.*
- e. The parties have agreed to an order regarding claims of privilege or protection as trial preparation material asserted after production, as follows: *Brief description of provisions of proposed order.*

3. AMENDMENT OF PLEADINGS AND ADDITION OF PARTIES

- a. The cutoff dates for filing a motion to amend pleadings are: *specify date*
Plaintiff(s) ___/___/___ Defendant(s) ___/___/___
- b. The cutoff dates for filing a motion to join additional parties are: *specify date*
Plaintiff(s) ___/___/___ Defendants(s) ___/___/___

(NOTE: Establishing cutoff dates for filing motions does not relieve counsel from the requirements of Fed.R.Civ.P. 15(a)).

4. EXPERT REPORTS

- a. Reports from experts under Rule 26(a)(2) will be submitted on: *specify dates*
Plaintiff(s) ___/___/___
Defendant(s) ___/___/___
Counter reports ___/___/___

5. OTHER DEADLINES

- a. Discovery cutoff: Fact ___/___/___ Expert ___/___/___
- b. *(optional)* Final date for supplementation of disclosures under Rule 26 (a)(3) and of discovery under Rule 26 (e) ___/___/___
- c. Deadline for filing dispositive or potentially dispositive motions and Daubert motions is ___/___/___

6. ADR/SETTLEMENT:

Use separate paragraphs/subparagraphs as necessary if the parties disagree.

- a. The potential for resolution before trial is: _____ good _____ fair _____ poor
- b. This case should be referred to the court's alternative dispute resolution program for arbitration: _____ mediation: _____
- c. The case should be re-evaluated for settlement/ADR resolution on:

specify date ____/____/____

7. TRIAL AND PREPARATION FOR TRIAL:

- a. The parties should have ____ days after service of final lists of witnesses and exhibits to list objections under Rule 26(a)(3) (if different than 14 days provided by Rule).
- b. This case should be ready for trial by: *specify date* ____/____/____
Specify type of trial: Jury____ Bench ____
- c. The estimated length of the trial is: *specify days* _____

Signature and typed name of Plaintiff(s) Attorney

Date: ____/____/____

Signature and typed name of Defendant(s) Attorney

Date: ____/____/____

NOTICE TO COUNSEL

The Report of the Attorney Planning Meeting should be completed and filed with the Clerk of the Court thirty days before the date of the Initial Pretrial Conference. A copy of the Proposed Scheduling Order on the court's official form should be submitted in word processing format by email to ipt@utd.uscourts.gov. If counsel meet, confer, and

(i) file a stipulated Attorney Planning Meeting Report and

(ii) email a draft scheduling order in word processing format by email to ipt@utd.uscourts.gov

30 days before the scheduled hearing, the Court will consider entering the Scheduling Order based on the filed Attorney Planning Meeting Report.

If the Hearing is held, counsel should bring a copy of the Attorney Planning Meeting Report to the Hearing.

In CM/ECF, this document should be docketed as
Other Documents - Attorney Planning Meeting.

More information is available at

<http://www.utd.uscourts.gov/documents/ipt.html>



ECF Civil • Cri

Other Documents

Attorney Planning Meeting ▼

Next Clear



UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF WYOMING

LOCAL CIVIL RULES

Current Revision: March 1, 2005

V DISCOVERY

Rule 26.1 DISCOVERY

(a) **Applicability.** This Rule is applicable to all cases filed in this District except where modified by Court order.

(b) **Stay of Discovery.** Formal discovery, including oral depositions, service of interrogatories, requests for production of documents and things, and requests for admissions, shall not commence until the parties have complied with Fed. R. Civ. P. 26(a)(1).

(c) **Initial Disclosure (Self-Executing Routine Discovery Exchange).** It is the policy of this District that discovery shall be open, full and complete within the parameters of the Federal Rules of Civil Procedure.

(1) **Initial Disclosures.** [Excerpted from Fed. R. Civ. P. 26(a)(1)(A)-(O)] Except in categories of proceedings specified in Fed. R. Civ. P. 26(a)(1)(E), or to the extent otherwise stipulated or directed by order, a party must, without awaiting a discovery request, provide to other parties:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment identifying the subjects of the information;

(B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment. In cases where it is impractical due to the volume or nature of the documents to provide such copies, parties shall provide a complete description by category and location in lieu thereof;

(C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(d) Rule 26(f) Meeting of Counsel; Initial Disclosure Exchange. The Court will set an initial pretrial conference no sooner than thirty-five (35) days after the last pleading pursuant to Fed. R. Civ. P. 7 or a dispositive motion is filed with the Court.

(1) Counsel must meet and confer in person or by telephone in accordance with Fed. R. Civ. P. 26(f) no later than twenty (20) days after the last pleading pursuant to Fed. R. Civ. P. 7 or a dispositive motion is filed with the Court. (See Appendix D)

(2) Counsel on behalf of the parties must exchange the initial disclosures (self-executing routine discovery), pursuant to Local Rule 26.1(c)(1) above, no later than thirty (30) days after the last pleading filed pursuant to Fed. R. Civ. P. 7 or a dispositive motion is filed with the Court.

(3) Counsel may either submit a written report or report orally on their discovery plan at the initial pretrial conference.

(e) Computer-Based Discovery. Prior to a Fed. R. Civ. P. 26(f) conference, counsel should carefully investigate their client's information management system so that they are knowledgeable as to its operation, including how information is stored and how it can be retrieved. Likewise, counsel shall reasonably review the client's computer files to ascertain the contents thereof, including archival and legacy data (outdated formats or media), and disclose in initial discovery (self-executing routine discovery), the computer based evidence which may be used to support claims or defenses.

(1) **Duty to Notify.** A party seeking discovery of computer-based information shall notify the opposing party immediately, but no later than the Fed. R. Civ. P. 26(f) conference of that fact and identify as clearly as possible the categories of information which may be sought.

(2) **Duty to Meet and Confer.** The parties shall meet and confer regarding the following matters during the Fed. R. Civ. P. 26(f) conference:

(A) **Computer-based information (in general).** Counsel shall attempt to agree on steps the parties will take to segregate and preserve computer-based information in order to avoid accusations of spoliation;

(B) **E-mail information.** Counsel shall attempt to agree as to the scope of e-mail discovery and attempt to agree upon an e-mail search protocol. This should include an agreement regarding inadvertent production of privileged e-mail messages;

(C) **Deleted information.** Counsel shall confer and attempt to agree whether or not restoration of deleted information may be necessary, the extent to

which restoration of deleted information is needed, and who will bear the costs of restoration; and

(D) Back-up data. Counsel shall attempt to agree whether or not back-up data may be necessary, the extent to which back-up data is needed and who will bear the cost of obtaining back-up data.

(f) Filing of Discovery Pleadings. Initial disclosures (self-executing routine discovery exchange pursuant to Local Rule 26.1 c), interrogatories under Fed. R. Civ. P. 33, and answers thereto, requests for production or inspection under Fed. R. Civ. P. 34, requests for admissions under Fed. R. Civ. P. 36, and responses thereto shall be served upon other counsel or parties, but shall not be filed with the Court. Certificates or notices of compliance are not required and shall not be filed with the Court. If relief is sought under Fed. R. Civ. P. 26(c) or 37 concerning any interrogatories, requests for production or inspection, requests for admissions, answers to interrogatories or responses to requests for admissions, copies of the portions of the interrogatories, requests, answers or responses in dispute shall be filed with the Court contemporaneously with any motion filed under Fed. R. Civ. P. 26(c) or 37. If interrogatories, requests, answers or responses are to be used at trial, the portions to be used shall be filed with the Clerk of Court at the outset of the trial, insofar as their use reasonably can be anticipated.

(g) Discovery of Expert Testimony.

(1) The parties are limited to the designation of one expert witness to testify for each particular field of expertise.

(2) A party may depose any person who has been identified and designated as an expert whose opinions may be presented at trial. An expert witness is one who may be used at trial to present evidence under Fed. R. Evid. 702, 703 or 705 including, but not limited to, expert witnesses who have knowledge of facts and hold opinions which were acquired or developed in anticipation of litigation or for trial.

(3) At the time of the initial pretrial conference, the presiding judicial officer shall, unless good cause appears to the contrary:

(A) establish deadlines by which any party shall designate all of their expert witnesses and provide opposing counsel with a complete written designation of the testimony of each witness;

(B) require the party designating the expert witnesses to indicate in reasonable detail the areas and fields of expertise and the qualifications of the witness as an expert in said areas and fields.

(4) The written designation of expert witness opinions shall include a

comprehensive statement of each of the opinions of such witness and the factual basis for each opinion and shall be filed with the Court. See *Smith v. Ford Motor Company*, 626 F.2d. 784 (10th Cir. 1980). The written designation shall include the following:

(A) A written report prepared and signed by the expert witness as set forth in Fed. R. Civ. P. 26(a)(2)(B); or a written report prepared and signed by counsel for the party;

(B) The party designating the expert shall provide a current resume or curriculum vitae including a list of all publications authored by the witness within the preceding ten years and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years; [Fed. R. Civ. P. 26(a)(2)(B)];

(C) require the party designating the expert witness to set forth all special conditions or requirements which the designating party or the expert witnesses will insist upon with respect to the taking of their depositions, including the amount of compensation the expert witness will require and the rate per unit of time at which said compensation will be payable. In the event counsel is unable to obtain such information to include in the designation, the efforts to obtain the same and the inability to obtain such information shall be set forth in the designation.

(5) In the event a designation of an expert witness fails to set forth the compensation to be paid by a party for the deposition of the expert, or fails to set forth the efforts to obtain such information for designation, any adverse party shall be entitled to depose such witness at the fee provided by the Federal Rules of Civil Procedure.

(6) In the event the amount and rate of the compensation is designated for the expert witness, and the deposition of that expert witness is taken without further action, discussion or agreement between counsel, then the amount described in the designation shall be paid by the party or parties taking the deposition.

(7) Nothing herein contained shall prevent the parties involved from agreeing to other terms and conditions and amount of compensation following the designation.

(8) In all cases where there is a dispute as to the proper compensation or other conditions relative to the taking of an expert discovery deposition, or an inability to obtain information concerning compensation, a party may file a motion with the Court pursuant to Fed. R. Civ. P. 26(b)(4) and (c) or Fed. R. Civ. P. 45(c), as the case may be. The Court will, thereafter, issue its order setting forth the terms, conditions, protections, limitations and amounts of compensation to be paid by the party taking the deposition.

(h) Discovery Time Limit. Whenever possible, discovery proceedings in all

civil actions filed in this Court shall be completed within ninety (90) days after joinder of issue or after such issues may have been determined at the initial pretrial conference. Exceptions hereto may be granted, upon good cause shown and upon timely application, and the time for completion of such discovery proceedings therein extended by order of this Court.

(i) Stay of Self-Executing Routine Discovery Exchange. The filing of pretrial dispositive and non-dispositive motions, including motions for protective order, shall not stay the requirement that the parties exchange routine discovery as prescribed by U.S.D.C.L.R. 26.1(c), absent an order of the Court granting a stay of self-executing routine discovery.

APPENDIX D

RULE 26(f) CONFERENCE CHECKLIST

Counsel shall be fully prepared to discuss in detail all aspects of discovery during the mandatory Rule 26(f) Conference. The subject matters to be discussed during the Rule 26(f) Conference shall include, but are not limited to, the following:

1. Jurisdiction;
2. Service of process;
3. Initial disclosures (self-executing routine discovery) pursuant to L. R. 26.1(c);
4. Formal written discovery - interrogatories, requests for production, requests for admission;
5. Computer data discovery pursuant to L. R. 26.1(d)(3);
6. Identity and number of potential fact depositions;
7. Identity and number of potential trial depositions;
8. Location of depositions, deposition schedules, deposition costs;
9. Identify the number and types of expert witnesses to be called to present testimony during trial (including the identity of treating medical/psychological doctors);
10. Discovery issues and potential disputes;
11. Protective orders;
12. Potential dispositive motions;
13. Settlement possibilities and a settlement discussion schedule.